

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9678 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIGHUBHA UDUBHA VARA

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

Mr. Samir Davvve,, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/09/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Jayshree Bhatt for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3.

1. The petitioner by this petition filed under Article 226 of the Constitution has prayed for appropriate writ, order or direction to quash and set

aside the detention order dated 15-10-1998 passed by the respondent no.2-District Magistrate, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short).

The petitioner has also prayed to set him at liberty forthwith.

2. The petitioner has produced the impugned order of detention and committal order vide Annexure "A" collectively while the grounds of detention supplied to the petitioner under Sec.9(1) of "PASA" are produced vide Annexure "B". That the said grounds indicate that three Prohibition Cases dated 14-11-1997, 4-4-1998 and 12-8-1998 are registered against the petitioner at Bhayavadar Police Station in respect to offences made punishable under the Bombay Prohibition Act. That in each of the case countrymade liquor has been seized from the possession of the petitioner. The said grounds further indicate that witnesses on assurance of anonymity have supplied information in respect to antisocial activities of the petitioner. The respondent no.2-The District Magistrate Rajkot having construed the said material produced before him has come to the conclusion that the petitioner is a " bootlegger" within the meaning of Section 2(b) of "PASA" and that resort to general provisions of law are not sufficient to prevent the petitioner from continuing his antisocial activity which is affecting and is likely to affect the maintenance of public order, and thereby, the impugned order has been passed.

3. Ms. J.C. Bhatt, learned Advocate appearing for the petitioner has assailed the order by contending that the privilege claimed by the detaining authority under Sec.9(2) of "PASA" in respect to anonymity of witnesses who are alleged to have supplied information against the petitioner is not genuine as statement of such witnesses have not been personally verified by the detaining authority. That the copy supplied with the ground of detention to the petitioner disclose the fact that Dy. S.P. Jetpur has verified the correctness of the said statement and has endorsed to that effect below the statement.

4. It is also contended on behalf of the petitioner that in November, 1998, the petitioner forwarded a representation against his detention to the State Government, however, only on 21st November, 1998 petitioner had received a communication that his

representation has been rejected and order of detention has been confirmed. On the said grounds, it is submitted that delay in considering the representation of the petitioner has violated the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution, and as such, the continued detention of the petitioner has become illegal, and thereby also, the impugned order deserves to be quashed and set aside.

5. As against that, learned A.G.P.Mr. Samir Dave relying on the observations made by the Division Bench of this Court in the matter of BHIKHABHAI THAKOREBHAI PATEL VS. COMMISSIONER OF POLICE, SURAT CITY & ORS. (1989 (2) G.L.H. p.420) has urged that under the law, it is not necessary that the detaining authority should personally verify the statements by calling the witnesses who have made the statement. That the gravity and magnitude of antisocial activity of the petitioner as apparent from the Prohibition Cases filed against the petitioner as well as the statement of privileged witnesses disclose the potentiality of the antisocial activity of the petitioner which is likely to prejudicially affect the maintenance of public order.

6. As regards the contention in respect to representation alleged to have been sent by the petitioner to the State Government, learned A.G.P. has vehemently urged that no such representation has been received either by the detaining authority or by the State Government. That the communication referred to and relied on, on behalf of the petitioner dated 21-11-1998 is a communication in respect to confirmation of the order after the receipt of opinion of Advisory Board constituted under Sec.10 of "PASA" and report received under Section 12(1) of "PASA" by the Government and as such, there is no question of vitiating the continued detention of the present petitioner.

7. It is apparent from the grounds of detention that the petitioner has been released on bail in each case where more than 100 litres of countrymade liquor was seized from the petitioner. Not only that, but the witnesses on assurance of anonymity have supplied the information clearly disclosing the potentiality of the activities alleged against the petitioner that members of general public residing in the vicinity have harboured a fear that the petitioner and his accomplice are likely to cause injury to their person or property if they do not agree to the illegal demand made by the petitioner and/or make any complaint against the petitioner in respect to his nefarious and criminal activities.

8. In the instant case, the detaining authority has clearly observed in the grounds of detention that supply of countrymade liquor by the petitioner and its consumption by the people of the locality is harmful to their health. It is also stated by the detaining authority that statement of witnesses clearly disclose that on account of violence resorted to by the petitioner the even tempo of public life in the community was disturbed. Thus, the material produced on record goes to show that the members of the public of the said locality has to run away from the place or to remain indoors keeping their houses closed on account of nuisance created by the petitioner and his accomplice. That the proviso to subsection (3) of Section 4 of "PASA" provide enlarged meaning to the term " public order" as used in Section 3(1) of "PASA", and as such, in overall consideration of the facts and circumstances as apparent from the grounds of detention produced on record, it is difficult to hold that the activities alleged to have been carried out by the petitioner are likely to cause breach of law and order and not breach of public order.

9. As regards genuineness of privilege claimed pertaining to statements of eight witnesses who have supplied information, it is held by this Court that it is not necessary for a detaining authority to himself call the witnesses and verify the fear expressed by them. It would be sufficient if the detaining authority has satisfied subjectively through assistance of his subordinate officer. In the instant case, it appears from the endorsement made below the statement of each of the witnesses that Dy. S.P. Jetpur has personally called the witnesses, have read out the statement to them and on verification has also made endorsement that each of the witnesses have requested the authority to keep their name and address secret so as to prevent any danger from the petitioner and/or his accomplice.

10. On the basis of the aforesaid discussion, all the three contentions raised on behalf of the petitioner are devoid of any merit. No other contentions having been raised by the petitioner, the petition fails and stands disposed of as rejected. Rule is discharged.

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